

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket 96-45
	)	
TRACFONE WIRELESS, INC.	)	
	)	
Petition for Designation as an	)	
Eligible Telecommunications Carrier	)	
In the State of New York	)	

**COMMENTS OF NEW YORK PUBLIC INTEREST RESEARCH GROUP**

The New York Public Interest Research Group submits the following Comments regarding the Petition of TracFone Wireless, Inc. (TracFone) for Designation as an Eligible Telecommunications Carrier in the State of New York and its Petition for Forbearance in CC Docket No. 96-45, filed June 8, 2004.

**Summary of Support**

As advocates for consumers in all income brackets in today's rapidly changing telecommunications marketplace, we write to support the inclusion of all consumer-friendly wireless telephone providers—those providers with their own facilities or those who “re-sell” service offerings—to receive designation as an “Eligible Telecommunication Carrier” or “ETC,” given that a strict set of pro-consumer recommendations be mandated by the Federal Communications Commission (FCC). Regardless of designation, we urge that the FCC promulgate strict regulations to protect the wireless consumers of sellers and re-sellers, and we offer a set of recommendations in the “Consumer Protections Recommendations” section of this memorandum. Furthermore, we have been on the record urging the Public Service Commission (PSC) in

New York State to hold power utilities accountable and in that vein go on the record here to urge the New York State PSC to re-exert its jurisdiction over the cellular marketplace.

## **Background**

The program that empowers ETCs to provide low-income consumers access to telecommunication technologies, the Universal Service Program (USP), should connect consumers to the best and most flexible services for their needs. Created to ensure that millions of consumers could gain access to the emerging telecommunications infrastructure in the United States, the program has developed deep flaws over the years that are elements for serious concern. Numerous consumer groups have raised questions about the method in which the “Universal Access Fee” is charged on consumers’ bills and allegations of mismanagement of the E-Rate program are distressing and require immediate action. The lifeline and linkup programs, however, appear to be successful and important programs that help many low-income consumers gain access to affordable telecommunication services.

## **Today’s Low-Income Telecommunications Consumer**

While cell phones were once viewed as luxury items, they have become increasingly important for consumers in all income brackets. There are certainly unique services that cell-phone providers can offer low-income consumers. Many low-income consumers commute long distances and/or work several jobs, meaning that they can spend many hours away from home each day. A cellular phone offers mobility, security, and convenience that a traditional wire-line can’t offer. This is, of course, not to say that cellular phones are always the superior choice for low-income consumers. But, there is probably a segment of that market for which a cellular option is the better choice. For those people, it could be that the only realistic and affordable solution would be to “cut the cord”—to only have a cell phone. It is for this reason that it is extremely likely that cell-phone providers will increasingly seek the designation of ETC, and that to allow access to the USP for all sellers or re-sellers of wireless service who engage in non-predatory service practices, may benefit the same low-income and rural consumers whom the program was envisioned to assist.

## **Consumer Protection Recommendations**

In New York, there is no governmental regulation of the wireless communications industry. It is vital that the Federal Communications Commission (FCC) act to provide cellular consumers, of all income brackets, with a comprehensive and forceful set of consumer protections. Here again, we also urge the New York State PSC to re-exert its jurisdiction over the cellular marketplace. Among the numerous protections needed, the key points would include, but not be limited to: a) detailed maps of coverage areas; b) allowing consumers at least 30 days to back out of a contract—without a termination penalty, for providers that require long-term contracts; c) conspicuous marking of handsets that offer location based e-911 services; d) a detailed and plain language contracts and billing; e) a complaint handling system managed and maintained by the PSC or some other government entity that would issue regular complaint rankings of providers; f) calls placed from a consumer's handset to the customer support lines should be free of charge; g) pre-paid cellular services offer cost-comparative minutes to contract plans and include a comprehensive set of consumer protections.

Furthermore, any wireless provider seeking to offer lifeline or linkup services would have to extend more permissive terms and conditions to those consumers, in addition to the previously suggested generic consumer protections. The cost should be at a substantially reduced rate in comparison to commercial cellular service and comparable to that of wired-line lifeline service. There would need to be complete disclosure, in plain language, as to any additional costs that a consumer may incur. This is especially important for any “bells and whistles” (special ring-tones, screen savers, text messaging, etc.), which can be quite confusing to many consumers. Pre-paid providers would have to eliminate any expiration dates on minutes used in the plan or extend them greatly and provide adequate advanced warnings regarding any expiring minutes or other features. Ideally, lifeline/linkup consumers would be eligible to simultaneously receive both wired and wireless services at discount rates, however this might require altering the rules governing the lifeline program.

## **Competitive Access to the USF**

Finally, and most importantly, one of the realities of the cellular marketplace is that providers can and will exist while owning and operating little, if any, traditional telecommunications facilities. For this reason, having the requirement that wireless providers actually own facilities seems anachronistic. When such criteria were set forth, the current wireless telecommunications landscape was not anticipated. Given the structure of wireless communication wholesale pricing and the current negotiation based price-setting, it seems clear that no “double-dipping” into the Universal Service Fund (USF) occurs. These criteria were set forth in 1997 in relation to the re-sale of incumbent local exchange carrier wire line local service which already receives the benefit of the USF. The wholesale cellular marketplace is structured in such a way that the service sold to re-sellers does not receive the benefits of the USF.

Given the changing world of telecommunications it does not serve consumers to block the expansion of programs as successful and beneficial as lifeline and linkup in order to comply with an out-dated set of criteria.

## **SUBMITTED BY**

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